APPENDIX

APPENDIX A

[Filed Nov. 14, 1966]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1966

No. 19,995
Civil 1900-65

ROBERT A. SCHMITZ, Appellant,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., ET AL., Appellees.

No. 19,996
Civil 2091-65

HERMAN A. SCHMITZ, ET AL., Executors of the Estate of Dietrich A. Schmitz, deceased, Appellants,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., ET AL., Appellees.

Appeals from the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Senior Circuit Judge, and Wright and McGowan, Circuit Judges.

Judgment

These cases came on to be heard on the record on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the orders of the District Court appealed

from in these cases are hereby affirmed on the opinion of the District Court, *Schmitz* v. *Societe Internationale,* D.D.C., 249 F.Supp. 757 (1966). See *Kelberine* v. *Societe Internationale, etc.,* —— U.S.App.D.C. ——, 363 F.2d 989 (1966).

Per Curiam

Dated: Nov. 14, 1966

APPENDIX B

February 7, 1966

Honorable Nicholas deB. Katzenbach
Attorney General of the United States
United States Department of Justice
Washington, D. C. 20025

Re: Robert A. Schmitz v. Societe Internationale Pour Participations Industrielles et Commerciales, S. A., et al
Civil Action No. 1900-65

and

Herman A. Schmitz, et al, Executors of the Estate of Dietrich A .Schmitz, deceased v. Societe Internationale Pour Participations Industrielles et Commerciales, S. A. et al
Civil Action No. 2091-65, in the United States District Court for the District of Columbia

Dear Sir:

I represent Robert A. Schmitz, individually, and Robert A. Schmitz, Herman A. Schmitz, and Lloyd J. Vail, executors of the estate of Dietrich A. Schmitz, deceased, in connection with equitable liens that they have against a fund in the Treasury of the United States in the name of Societe Internationale Pour Participations Industrielles et Commerciales, S.A., commonly known as Interhandel. Although this fund originally amounted to $121,000,000, it has now been reduced by $60,000,000 upon your authorization

to the Secretary of the Treasury. This fund was set up and maintained and your release and disbursements have been made pursuant to a stipulation of settlement entered into in *Societe Internationale* v. *Kennedy,* Civil Action No. 4360-48 in the United States District Court for the District of Columbia.

On behalf of my clients I instituted suits against the Secretary of the Treasury in Civil Actions Nos. 1900-65 and 2091-65 in the same District Court. These suits constitute an attempt to enforce the equitable liens against the fund in the Treasury. These suits allege that the fund is in fact the property of Interhandel, although on deposit in the Treasury as a pledge to secure the United States against possible liability in the event certain types of claims are filed. It is our contention that there is no discretionary function to be exercised either by the Attorney General or the Secretary of the Treasury, but only a ministerial one to perform upon the occurrence of certain events. In any event, we contend that whatever the United States' interest might be, Interhandel had a title capable of attachment.

Motions to Dismiss were made on behalf of the Secretary of the Treasury and by Interhandel. The Secretary was represented by Mr. Robert Wieferich of your department. The basis of the government's motion was that the United States had an interest in the fund, that the suits were an attempt to control the discretion of the Attorney General and that therefore they constituted unconsented suits against the United States. Judge David A. Pine of the District Court went along with this argument and filed a sixteen page opinion in which he held, in effect, that the suit was premature and granted the motion to dismiss without prejudice to my clients' reasserting the lien at such time as a release of the fund or any portion thereof was made by you. It would then become, he suggested, a ministerial duty on the part of the Secretary of the Treasury to disburse the funds which might thereupon be at-

tached by suit in accordance with a familiar line of cases in the Supreme Court and the United States Court of Appeals for the District of Columbia.

In the course of argument, Judge Pine inquired whether any request had been made of you to notify me or my clients of the original release or any request that we be notified of an intention on your part to authorize future disbursements. I replied that no such request had been made, but the tenor of Judge Pine's remarks was that such a request might very well be entertained by you. I therefore request you to notify me, as attorney for the claimants, when you propose in the future to authorize the Secretary of the Treasury to disburse funds to Interhandel. You can appreciate the difficult situation in which we find ourselves in that it is essential that the claim not be asserted too early or too late. Before your authorization, the District Court held that it is too early. After your authorization, the disbursement might well be made before we have knowledge of the situation and therefore, subsequent to the actual disposal of the funds to the foreign corporation. Thereafter, the Courts of the United States would lose jurisdiction entirely and it would be necessary for my clients to pursue their doubtful remedies in a foreign court.

I invite your attention to the allegations of the two complaints. The one on behalf of the estate of Dietrich A. Schmitz alleges that he was president of General Aniline & Film, the United States corporation, the sale of whose stock provided the entire fund from which both the United States and Interhandel have been paid. It recounts his long efforts and severe losses on behalf of his Swiss principal, Interhandel, and sounds in both quasi contract and in contract, since it alleges the promise to make him whole from the fund when it was received. The suit by Robert A. Schmitz, the son of Dietrich, outlines the work he did for Interhandel in connection with its attempts to establish its rights to the stock in General Aniline and Film and its

promise to him to pay him 5% of any recovery provided he obtained the services of Mr. Charles A. Wilson, former president of the General Electric Company, to act as trustee on its behalf. It recites the accomplishment of this requirement. The plaintiffs, of course, are all American citizens, who have played a very vital part in the long history of the formation and operation of General Aniline and Film, its seizure by the government and the ultimate settlement whereby Interhandel received a large proportion of its original claim. It would be but simple justice that these individuals be given their day in court. It would be a cruel mockery of justice if they were denied the right to establish their liens by reason of their ignorance of the date of the release of the fund and its disbursement by the Secretary of the Treasury, all of which could happen in very short order.

We do not believe that Judge Pine's decision was legally correct and therefore have filed notices of appeal in each case. We will, of course, actively prosecute these appeals but the simple solution would be an agreement from you to give us notification at the appropriate time. This would enable us to accord with Judge Pine's decision and moot the appeals.

This letter is, therefore, written to request that you, in the interest of justice and fair play, give them an opportunity to assert their liens at such a time as you determine that the United States has no further interest therein. Alternatively, the plaintiffs have offered in their pleadings, and renew their offer now, to an agreement pursuant to the provisions of Sections 308 and 309 of Title 40 of the United States Code. This would result in an agreement between my clients and the United States to recognize the priority of the government's interest and to assent to a junior position in the assertion of their liens. In the past you, in your capacity of Deputy Attorney General, have recognized the interest of Robert A. Schmitz and his father in this matter, and in a letter written by you several years

ago at the request of Attorney General Kennedy, expressed your and his appreciation of Robert Schmitz' cooperation with the government.

Accordingly, I solicit your favorable consideration of this request and request that you advise me that you will give my clients ample opportunity at the appropriate time to assert their liens against the fund in Interhandel's name or alternatively, enter into a stipulation as hereinabove suggested.

Respectfully submitted,

Ross O'Donoghue

APPENDIX C

June 30, 1966

Mr. Ross O'Donoghue
Union Trust Building
Washington, D. C.

Dear Mr. O'Donoghue:

The Attorney General has asked me to reply to your letter of February 7, 1966 which he acknowledged in his letter of February 17, 1966. After consideration of the requests discussed in your letter and the countervailing considerations presented by Mr. Wilson, it has been decided that it would be inappropriate to enter into a stipulation under 40 U.S.C. 308, 309 or to give you notice at this time of any determination made under Section VIII: 4. of the stipulation of settlement in the Interhandel case. You are aware, of course, of Judge Pine's view, stated in his opinion of January 19, 1966 in a somewhat different context, that the provisions of 40 U.S.C. 308, 309 are not appropriate to the handling of this matter.

We do not believe that denial of your requests at this time adversely affects your clients. We have no intention, for example, of permitting the reduction, in the immediate future, of the Interhandel fund in the Treasury to a point

where it would be inadequate to satisfy the demands of your clients. Meanwhile you may have the opportunity, by the means suggested by the Kelberine decision, to prosecute the merits of your claims directly against Interhandel. The facts thus judicially developed might shed a different light on your requests.

Yours very truly,

ANTHONY L. MONDELLO
Deputy Director
Office of Alien Property

APPENDIX D

November 1, 1966

Honorable Ramsey Clark
Acting Attorney General of the United States
United States Department of Justice
Washington, D. C. 20025

Re: Robert A. Schmitz v. Societe Internationale Pour Participations Industrielles et Commerciales, S. A., et al
Civil Action No. 1900-65

and

Herman A. Schmitz, et al, Executors of the Estate of Dietrich A. Schmitz, deceased v. Societe Internationale Pour Participations Industrielles et Commerciales, S. A., et al
Civil Action No. 2091-65, in the United States District Court for the District of Columbia

Dear Sir:

This letter is in further reference to my letter of February 7, 1966, to your predecessor, the Honorable Nicholas deB. Katzenbach, and the reply thereto dated June 30, 1966, by Mr. Anthony L. Mondello, which letter was written

at the request of Mr. Katzenbach. I will not undertake here to repeat the outline of the situation and the problems which are of such concern to my clients and me. This was done in detail in my letter of February 7.

I write this letter because I learned for the first time last Thursday, at the argument of the aforesaid cases in the Court of Appeals, that the Attorney General recently released to Interhandel an additional $30,000,000.00 of the Interhandel fund. I am not aware of the date of this payment for I had no knowledge that any plan of this kind was even contemplated. Needless to say, my clients and I are much distressed by this action which we feel tends to prejudice our case.

We seek an opportunity to enforce the equitable liens asserted in these suits and the portion of the fund recently released to Interhandel would have been more than adequate for this purpose. There was a period of time when this could have been done and when you would have had to concede that the Secretary of the Treasury had the mere ministerial duty to pay the funds. That this additional $30,000,000.00 was disbursed to Interhandel makes it evident that you have little fear that the United States will need any of the Interhandel funds to indemnify it from possible claims against the United States. Doubtless, the fact that no such claims have been asserted, coupled with the passage of considerable time since the fund was created, fortifies you in your belief that no such claims ever will be made. You are no doubt also confident that if any such claim ever were asserted that Interhandel would take appropriate steps to hold you harmless and further that the United States could have the adequate defense of sovereign immunity to such a claim. I assume, therefore, based on the letter of Mr. Mondello of June 30, that the amounts now left in the Treasury are retained more for the purpose of protecting my clients than out of fear of any concern on your part that the United States will ever have to look to this fund for indemnification. Although this action of

further release of funds is eloquent of this belief, nevertheless, your representative in the Court of Appeals, Mr. Salzman, still insists that the possibility of claims is an actual concern of yours.

In an effort to crystallize the present situation and in the interests of fair play, I would appreciate a statement from you that no claims cognizable under the provision of the stipulation between the Attorney General and Interhandel have been made and that there is now little reason to anticipate that any will be made. I would like to know the facts as to these circumstances so that I can assure the Court that the interest of the United States in these funds is now either non-existent or extremely minimal.

Respectfully,

Ross O'Donoghue

APPENDIX E

Assistant Attorney General
Civil Division

DEPARTMENT OF JUSTICE
Washington 20530

November 21, 1966

Mr. Ross O'Donoghue
Union Trust Building
Washington, D. C. 20005

Dear Mr. O'Donoghue:

This will acknowledge your letter of November 1, 1966 to the Acting Attorney General.

As you know, the sole basis for the retention of Interhandel funds permitted by the stipulation of settlement

in the Interhandel case relates to the potential need for indemnification of the United States. Contrary to the suggestions contained in your letter, the current balance of the Interhandel fund is not being retained for the protection of your clients, but only for the protection of the interests of the United States under the agreement with Interhandel.

In response to your specific requests you should know that while no claims which would trigger the indemnification provisions of the stipulation have yet been made, we have no assurance that none will ever be made. Accordingly, we cannot furnish you with the statement you desire.

Sincerely,

/s/ BAREFOOT SANDERS
Barefoot Sanders
Assistant Attorney General

APPENDIX F

January 17, 1967

Honorable Ramsey Clark
Acting Attorney General of the United States
United States Department of Justice
Washington, D. C. 20025

Dear Sir:

You are familiar with the claims of Robert A. Schmitz and the Estate of Dietrich A. Schmitz against Societe Internationale Pour Participations Industrielles et Commerciales, S.A., commonly known as Interhandel. You will remember that suits were filed against Interhandel and the Secretary of the Treasury. The suits were numbered 1900-65 and 2091-65 respectively, in the United States District

Court for the District of Columbia. They asserted a lien by the plaintiffs in each case against the fund in Interhandel's name in the Treasury of the United States as a result of the sale of the stock of General Aniline and Film Corporation. The suits were dismissed and the dismissals were sustained by the Court of Appeals on the theory that the United States had an interest in the fund, however contingent it might be.

During the pendency of those suits substantial additional amounts were released by the Attorney General and disbursed by the Secretary of the Treasury without our having an opportunity to assert a lien against the released funds at a time when they were still in the Treasury of the United States subject only to the ministerial duty of the Secretary to pay out the funds. However, we are advised that some substantial amount still remains in the Treasury and pursuant to the suggestions made at oral hearing by members of the Court of Appeals and following the teaching of *Kelberine* v. *Societe Internationale, etc.*, 363 F.2d 989, decided by the United States Court of Appeals for the District of Columbia on April 7, 1966, we have now filed suits against Interhandel alone, serving their local agent and attorney, John J. Wilson.

This letter is to advise you of the existence of the suits, the claims against the fund and the propriety of your holding what remains of the fund intact until a disposition can be had of the present suits. I will not again rehearse the various considerations concerning the merits of our claim and the untenable position we might find ourselves in in the event of distribution, since I set out those various factors in my correspondence with your predecessor. I trust therefore, that in the interest of justice, you will not authorize further disbursements during the pendency of these suits. I also hope that you will notify me when the United States is in a position to state that it has no further claim against the fund and that its only concern is that it

be disbursed in accordance with the various claims thereto, whether by Interhandel or by these plaintiffs.

Respectfully,

Ross O'Donoghue

APPENDIX G

Feb. 3, 1967

Mr. Ross O'Donoghue
Union Trust Building
Washington, D. C. 20005

Dear Mr. O'Donoghue:

This will acknowledge your letter of January 17, 1967 to Acting Attorney General Clark which requests that no further disbursements from the Interhandel fund be authorized during the pendency of your clients' suits against Interhandel, and that you be notified when the United States is in position to state that it has no further claim against the fund.

The facts referred to in your letter do not appear to change the substance of the questions discussed in your letter of November 1, 1966 to Mr. Clark, and in our response of November 21, 1966. Also, matters closely similar to the requests you make were at issue in the *Kelberine* litigation, and were decided by the Court of Appeals adversely to persons who are in the position of your clients. The Supreme Court recently denied certiorari in that case. We see in these circumstances no reason to change the view stated in our earlier letter.

Sincrely yours,

Barefoot Sanders
Assistant Attorney General